



## COMMUNITY DEVELOPMENT DEPARTMENT

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### PLANNING COMMISSION MEETING MINUTES

#### REGULAR MEETING

APRIL 13, 2004

PRESENT: Acevedo, Benich, Engles, Lyle, Mueller, Weston

ABSENT: None

LATE: Escobar, who arrived and was seated at 7:06 p.m.

STAFF: Community Development Director (CDD) Bischoff, City Attorney (CA) Leichter, Planning Manager (PM) Rowe, Senior Engineer (SE) Creer, Associate Planner (AP) Tolentino, and Minutes Clerk Johnson

Chair Mueller called the meeting to order at 7:02 p.m. and asked CDD Bischoff to lead the flag salute.

#### DECLARATION OF POSTING OF AGENDA

Minutes Clerk Johnson certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

#### OPPORTUNITY FOR PUBLIC COMMENT

Chair Mueller opened the public hearing.

With no one present wishing to address matters not appearing on the agenda, the public hearing was closed.

#### MINUTES:

MARCH 23,  
2004

COMMISSIONERS BENICH/ACEVEDO MOTIONED TO APPROVE THE MARCH 23, 2004 MINUTES, WITH THE FOLLOWING MODIFICATIONS:

Page 8, paragraph 7: ~~finer fees~~

Page 8, (Resolution No. 04-34b): [Exhibit A.....] ~~one-year~~ two months

Page 9, 1<sup>st</sup> paragraph: ~~180~~ 182; ~~and on line 8 supplemental (supplemental including 2 units not used by an 04/05 affordable project).~~

Page 8, add paragraph 5: Commissioner Acevedo informed that he had work done on his property in the same general area in the past and he had not experienced the

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*obstacles which are being discussed. Commissioner Acevedo expressed concern that there seemed to be a high level of 'foot dragging' with this project and suggested the applicant and his engineer should be more aggressive in working with the Agencies involved.*

Page 10, paragraph 9: ~~Dempsey Borello~~ Page 11, paragraph 4 (Resolution No. 04-35) .....MUELLER-~~WESTON~~; NOES: ~~WESTON NONE~~

Page 11, paragraph 5: *small-project competition*

Page 11, paragraph 6 ~~Dempsey Borello~~

Page 12, middle of 1<sup>st</sup> paragraph: ~~eliminate cumulative and~~ in Resolution No. 04-36: 2005/06 ~~2006/07~~; from ~~71 to 75~~ 60 to 71; the Coyote Estates project was awarded 12 supplemental allotments for a total of 20 to complete the project

**THE MOTION PASSED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

### OTHER BUSINESS:

#### **1) TUP-04-05: FOOTHILL-THE INSTITUTE**

Review of a preliminary decision of the Community Development Director to approve a Temporary Use Permit (TUP) to allow limited use and maintenance of an existing 128 acre golf course pending completion of the Project Environmental Impact Report (EIR) and consideration of a Planned Unit Development (PUD) zoning amendment application for the existing development. The project is located at 14830 Foothill Avenue, on the east side of Foothill Avenue at East Middle Avenue.

CDD Bischoff presented the staff report, giving the background of the project and informing that the Draft EIR has been completed and the proposed final EIR document will be presented at the May 25<sup>th</sup> Planning Commission meeting and to the City Council the following month.

CDD Bischoff explained that the last Temporary Use Permit (TUP) had been appealed to the City Council; consequently there had been no opportunity for public comment. Discerning this fact had caused City leaders to initiate a process for amending the Municipal Code; however, CDD Bischoff noted, "The new process is not in place yet. The TUP was agendized tonight so public comment could be heard. There is no Planning Commission action being sought, but comments from the public and the Commissioners." He indicated that the information presented tonight included the conditions recommended, and that the former TUP dealt with maintenance.

CDD Bischoff said this evening, the request is not an item that deals with play on the course, although the applicant has asked for play. The Planning Department, CDD Bischoff said, has contacted the other Agencies involved with the permitting process, to ask for comments. Continuing, CDD Bischoff said, "If play is to be permitted, this is would require a certificate of approval from the Planning Department," noting he believes and recommends the TUP being granted, as long as the City can control the required conditions.

CDD Bischoff cautioned that if staff were to deny the TUP, the ability to regulate mowing, maintenance, etc. would be lost. "We are not in favor of having play allowed as that would increase the need for maintenance, including fertilization. It is important to

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maintain the area in a natural condition,” CDD Bischoff informed, “as this is preliminary since comments received tonight could change the conditions ultimately placed on the project.” He stressed that it was not a forgone conclusion that approval will be given; the Water District has indicated that not all conditions of the permit have been followed. The applicant has said yes, they have, and the Planning Department is trying to sort out what has actually happened. “If the applicant is approved,” CDD Bischoff said, “all the conditions must be satisfied before issuance of the TUP.”

Commissioner Weston asked, “If there is not compliance with original TUP, a new TUP would not be in effect until conditions are met. So what happens now?”

CDD Bischoff said there is a need to maintain status quo. If the applicant eliminates the watering, it would do more harm, so we suggest that minimum maintenance at least be done.”

Commissioner Weston asked if the course can be played now?

CDD Bischoff indicated that to do so would cause violation of the City Code.

Commissioner Weston asked about public comment?

CDD Bischoff indicated that this scheduled meeting had been noticed for public input. He spoke again on the discrepancy in the City Code which is in the process of being modified for correctness. Notice had been sent to all interested parties, CDD Bischoff indicated.

Commissioner Acevedo asked when the EIR would be finalized?

CDD Bischoff informed that a large number of comments had been received, so staff has been working diligently on it and it is anticipated the final EIR will be heard at the second Commission meeting in May.

Commissioner Acevedo inquired how long after finalization of the EIR before play could begin?

CDD Bischoff said the EIR would be heard concurrently with the zoning request.

Commissioner Benich called attention to the staff report: page 5 item g, asking if this is a new item (nocturnal lights survey for bullfrogs)? It was ascertained this was not new. Providing additional information, PM Rowe explained about the butterfly habitat indicated in the staff report.

In opening the public hearing, Chair Mueller explained about having public comment for the TUP.

**Bill Konle, 3270 Pasgo Vista, San Martin, spoke on the streams that ‘path’ through his neighborhood area to the site. Mr. Konle also spoke on migration of bullfrogs. He said that he (personally) takes care of water system in his area for the neighborhood, and stated that he has a well within 30 feet of the Fry property. Mr. Konle has concluded through his testing of the wells that there is no significant**

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variation in *the nitrate level of his well*. He also announced that his well is 'well below' the nitrate level of wells to the west. Mr. Konle revealed, "The 'Fry people' are good neighbors who invited him to play the golf course - and it's a tough course - following discussions with the company personnel." Continuing, Mr. Konle declared that the previous owner had operated an 18-hole golf course which had fallen into bankruptcy and then the land lay fallow. Mr. Konle indicated there had been previous misunderstandings with this application regarding the upgrading of the golf course. Saying he believed the project would be an asset to City, Mr. Konle said he thinks continuing the existing maintenance would be beneficial as he claimed there would be no increased water use. "We would not gain by stopping players as there are no cart paths, so the golfers must walk and this puts minimal impact on the course," Mr. Konle said. Mr. Konle reiterated that he has played twice - and believes that limited play is not harmful to the course nor the environment.

Commissioner Lyle questioned Mr. Konle's statement of 'no carts', asking if that meant no pull carts as well? [Yes]

Commissioner Escobar asked Mr. Konle, "Would you be in favor of the course being open to the public?" Mr. Konle replied, "No, it should not be open to the public for one reason: It is much too difficult to play; it must be walked - and carry clubs - which would generally be much too difficult.

Commissioner Weston recalling that Mr. Konle indicated he had been on the course and talked to the proponent, asked, if since abandonment of the property by the previous owner and the acquisition by the present owner, any his (Mr. Konle's) property had been impacted? [No] Commissioner Weston continued, "Not from grading, increased trees?" [No] Mr. Konle informed that Mr. Fry has imported trees from all over, as well as increasing the wildlife habitat.

Commissioner Acevedo called to mind Mr. Konle's statements regarding bullfrogs on his property, asking about that fact? Mr. Konle said he has seen the bullfrogs and spoke on the habitat of bullfrogs.

John Farrow, 140 2<sup>nd</sup> St., 6<sup>th</sup> floor, San Francisco, said he represents the Audubon Society and the Green Hills Conservancy Group. Mr. Farrow said the project won't benefit either the City or the environment. He reminded that the requirements of the California Environmental Quality Act (CEQA) must be met for issuance of a TUP, adding that the Institute hasn't met conditions currently required. Mr. Farrow stated that he has been in contact with personnel from Fish and Wildlife Service, noting that he has been told by that Agency that the applicant has not met the requirements, providing the due dates, and indicating the Agency representatives have said a monitoring plan has not been adequately presented, nor has there been delivery of revised plans. Mr. Farrow listed each of the conditions which he indicated had not been met, reciting the dates for each. He also spoke on the lack of data which has been repeatedly asked for by the Water District. Mr. Farrow said the City does not have sole jurisdiction, claiming this to be a public nuisance which can be abated. "It is illegal to maintain (this project) at the present time and the City should not have issued the TUP," Mr. Farrow asserted. "Since the applicant has not met conditions, they should not be given a TUP. The EIR is being circulated for comment and it has a host of violations." Mr. Farrow further indicated

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public notice is in violation, as the TUP couldn't be completed until the EIR/CEQA conditions are met. Mr. Farrow said that further extension/approval of the TUP is not in accordance with the CEQA guidelines.

Commissioner Weston said to Mr. Farrow, "You are here claiming that what the City is doing is illegal. You represent large groups; the City currently has an environmental lawyer. Why are you not taking legal action?"

Mr. Farrow informed that there have been appeals. "We are arguing tonight that the City should not take further action." Further responding to Commissioner Weston, Mr. Farrow said, "This TUP is not needed and is indeed illegal to issue as discretionary because the conditions of CEQA have not been met."

Stephen Sorenson, PO Box 1448, representing the applicant, informed that Randy Long was present as the lead Environmental Planner and could answer questions. Mr. Sorenson stated that the underlying issue was: the applicant did apply for a TUP which includes maintenance and play. This TUP being presented by the Planning Department, as written, he said, does not include play, but we ask for limited play: 16 rounds per day, during summer months, 5 days per week."

Commissioner Lyle interjected that he thought 30 rounds of golf per day had been the request?

PM Rowe clarified that the TUP indicated 16 rounds of golf, but the EIR addresses 36.

Commissioner Lyle inquired, "If play is included, how much change in maintenance would there be?"

Mr. Sorenson said he was unsure, noting that perhaps there would be changes in mowing, watering, and fertilizer application, but those would probably be minimal.

Commissioner Acevedo indicated that the test wells had been 'a big thing, and still seems to be an issue', what has happened with that?

Mr. Sorenson said the Institute needs permits to drill the well, and that the well must be drilled before all agencies have responded so that a plan can be drawn up. "When we get approval, we will drill the wells," he explained.

Randy Long, 329 Mt. Palomar Place, of RCL Ecology, and a representative of the applicant said his company has been coordinating the studies and responses to the previous TUP. Mr. Long explained that the City has monitored the work throughout the TUP process. "This is the first time we've heard of non-compliance," Mr. Long said, objecting to that and saying, "Those that have taken the longest have been those with the multi-agency concerns." He told of problems with coordination and language. Mr. Long spoke in depth on one of the requirements for the plan – which had been due by November – and which have required continued negotiations, "This has taken an 'unreal' amount of time." Mr. Long also spoke on the monitoring well plan that has been sent to the required Agencies, saying he has come to expect delays as he must wait for responses. "We have taken all possible actions to try and push 'things' along," Mr. Long stated as he told of issues with trying to get monitoring wells in place."

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Mr. Long informed the Commissioners of his intent to present (tonight) the documents which support his statements, and indicating that he anticipates continued meetings with the Water District.

Mr. Long then systematically refuted the items presented by Mr. Farrow, including the accusation of riparian habitat destruction. Mr. Long said he and the applicant have not been told by the City that items were not received. He insisted that he has been in contact with proper Agencies. Mr. Long continued by speaking on the studies on bull frogs and red legged frogs, noting that December not possible for study of the animals as they were hibernating then. "That study was postponed to March and we reported this to Fish and Wildlife, then we were told not to emphasize the red legged frog, and so have resubmitted a plan to Fish and Wildlife," Mr. Long made clear. "We have also submitted an irrigation and fertilization plan to the Water District," telling what was sent and when. He explained that the applicant (through his firm) has also been in contract with Santa Clara Soil Consultants for nitrogen amount measurement. "We were told a CHAMP is needed; that turned out to be a much larger document than originally thought, but we have submitted all the data. We have done our best to comply with all items needed and that is what we will continue to do. We have complied and have sampled water regularly," Mr. Long proclaimed. He continued by talking about the effect of play on the course due to nitrogen placement and water. He debated the value of doing nothing as a value to the environment. "At this time of the year, there is a need for frequent fertilizing; to say that play would cause environmental degradation is not the case," Mr. Long concluded.

Commissioner Benich indicated that throughout the report there has been a 'lot of talk of bullfrogs', and noting that the speaker had said this is an introduced species from the East, and asking, "What's the big deal." It was subsequently discussed that this type of bullfrog has a larger breeding capacity, and that when surveying occurred at a nearby creek, it was found that there was 'lots' of migration. "These bullfrogs have no predators except man. Our expert spotted one bullfrog, captured it, and just wants to monitor," Mr. Long explained.

Commissioner Acevedo asked if there are meters on the wells for monitoring. Mr. Long responded that the monitors are present and will be checked by the Water District.

Commissioner Acevedo indicated that Mr. Konle said there are lots of bull frogs, and asked Mr. Long the plans for controlling them, as they have mitigation patterns.

Mr. Long cited the uphill pond, which he estimated to be about one-half mile away from the site, indicating he thinks a survey would be warranted. He explained that migration is an issue, but said that the watering of the course at night have indicated that it was good for Red Legged Frog and Tiger Salamander due the fact that they forge at night. Mr. Long thought the *non*-endangered species (bullfrogs) come out at night. "Their habitat is in a pond, and they are easily identified." He conceded that the bullfrogs like the sprinklers on the course, stressing that he wants to monitor and control that habitat. *The bullfrog is not an endangered species.*

Commissioner Acevedo called attention to the *bullfrog control extermination plan*, noting, *bull frogs are the predatory species who feed on the California Red-legged frog.*

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*the CLRF is the endangered species. The Bullfrog is the extermination target species. as he asked whose plan it is? Mr. Long said that the plan is from Fish and Wildlife. He added, "This year we were told we would not have to drain lake, as young red-legged frogs are not at risk of danger."*

CDD Bischoff asked if the applicant has completed the well monitoring plan and creek monitoring plan? Mr. Long responded affirmatively and presented those plans to staff and the Commissioners. Mr. Long announced that he was presenting 'several plans' as well as those requested by CDD Bischoff.

With no others present indicating a wish to speak to the matter, the public hearing was closed.

Chair Mueller turned to the Commissioners inviting comments.

Commissioner Acevedo said he thinks some play would not be unreasonable, but 'I don't know how much. He said that in his opinion the 'bullfrogs control plan' presented seems extreme and indicated that he was glad the applicant has presented a plan. "The original TUP should be looked at to ensure the reporting is kept current," Commissioner Acevedo said. ~~Mr. Long said there is a need for the monthly reporting required by the Agencies, but expressed doubts about the current requirements, as he thinks there will be resolution of the issues by June or July.~~ Commissioner Acevedo expressed doubts about the need for monthly reporting, saying he thought quarterly would be appropriate. He subsequently with drew his concern as the tedium of the reporting for them would end relatively soon, June or July when the EIR is adopted and the Facility would be fully permitted.

Commissioner Engles said he is in favor of the TUP including play on the golf course. He wondered what would have happened if the property had not been purchased? I think it would have been a mess, indicating he is in favor of the project and 'thinks the applicant has done good job.'

Commissioner Weston said he is in favor of granting the TUP but his concern is the inexperience of the applicant in dealing with the required agencies. "I ~~don't~~ think that we have an illegal situation now, but there is need to reach resolution when the EIR comes down," Commissioner Weston said. He said he also thinks there has been much finger pointing, and would grant the TUP, but not allowed a continuance, saying he is concerned about the length of time involved already.

Commissioner Lyle said he could accept the staff's reason for granting the TUP. "I was impressed with what is being done at the site. Things have been made better. I'm not adverse to the applicant being given permission to playing rounds, but it should be limited, maybe 16," he said. Commissioner Lyle indicated he felt the applicant's answers were soft on the effect of play on the course to the environment.

Commissioner Benich said, "I support the staff report. I feel the measures are extreme for dealing with the bull frogs. However, we need to 'hold the applicant's feet to the fire' to make sure the conditions are met. I am definitely not in favor of allowing play."

Commissioner Escobar said he also supports issuance of the TUP. "When I toured the

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site, I had an observation: the large lake seemed to be building up with algae and nothing about that issue has been addressed in the report. At this point, I ask why? Some comment on the impact of this is needed. I have no objection to the applicant's request to allow play on the course."

Chair Mueller stated he would make no further comment but spoke to the value of having a permit (TUP) in place for guidance. He also suggested to staff that if any of parties who had raised objections could be facilitated with a meeting to seek resolution that might be useful. "We have used that approach in the past and it has worked well. I am especially concerned that the concerns of the Agencies involved be addressed."

### OLD BUSINESS:

#### **2) APPROVAL OF FINAL AWARD OF FY 2005-06 BUILDING ALLOTMENT TO PROJECTS THAT COMPETED IN THIS YEAR'S (2003) SMALL PROJECT AND MICRO PROJECT COMPETITION**

PM Rowe presented the staff report asking the Commissioners to formalize the building allotment awards for FY 2006 - 07 and presenting corrections for Resolution No. 04-37, pointing out the separation of the Small/Micro units. PM Rowe also called attention to revised Resolution No. 04-38, Section 2, which clarifies the potential result of the appeal saying there may have be need for reassignment resultant from the appeal.

Commissioner Lyle pointed out that in Resolution 04-37 the Hill Gera application was awarded allocations as the next in line, and that both years had been considered, consequently there is not truly a second year competition, and so is not included here.

Chair Mueller opened the public hearing.

With none present, the public hearing was closed.

At 8:10 p.m. Commissioners Acevedo and Escobar left the meeting due to conflict of interest with the agenda item.

**COMMISSIONER LYLE OFFERED RESOLUTION NO. 04-37, AWARDING THE DISTRIBUTION OF THE BUILDING ALLOTMENTS IN THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM OPEN/MARKET SMALLL PROJECT COMPETITION FOR THE FISCAL YEAR 2005-06 AND RECOMMENDING A SECOND YEAR ALLOCATION FOR FISCALYEAR 2006-07, WITH THE FINDINGS AND CONDITIONS CONTAINED THEREIN. COMMISSIONER BENICH SECONDED THE MOTION, WHICH PASSED WITH THE FOLLOWING VOTE: AYES: BENICH, ENGLS, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: ACEVEDO, ESCOBAR.**

Commissioners Acevedo and Escobar rejoined the meeting at 8:11 p.m.

**COMMISSIONER LYLE OFFERED RESOLUTION NO. 04-38, ESTABLISHING RESIDENTIAL DEVELOPMENT CONTROL SYSTEM ALLOTMENTS FOR MICRO MEASURE P RESIDENTIAL PROJECTS FOR FISCAL YEAR 2005-06 AND RECOMMENDING A SECOND YEAR ALLOCATION FOR FISCAL YEAR 2006-07. NOTING THE FINDINGS AND CONDITIONS CONTAINED WITHIN THE RESOLUTION, COMMISSIONER ESCOBAR SECONDED THE MOTION PASSED WITH THE FOLLOWING VOTE: AYES: ACEVEDO,**

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**BENICH, ENGLER, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE;  
ABSTAIN: NONE; ABSENT: NONE.**

**3) ZA-04-01/  
SD-04-01/  
DA-04-01:  
TILTON-  
GLENROCK**

A request to amend the precise development plan for the Capriano subdivision located on the west side of Hale Ave., south of Tilton Ave. The proposed amendment would allow for 107 single family detached homes. Also requested is the approval of a 69-lot subdivision map and development agreement for a 27-acre portion of the 67 acre Capriano project.

PM Rowe presented the staff report, saying the required revised plans had not been received timely for staff review. PM Rowe said the tentative map had not yet been received. He said that the Commissioners had forwarded several questions/concerns regarding the project to him and those needed attention, as well.

Chair Mueller opened the public hearing.

Rocké Garcia, 1000 Old Quarry Road, San Jose, said he clarified many questions from Commissioner Lyle during discussion.

Commissioner Lyle said to PM Rowe that in looking at the tentative map, there may be need for staff to provide direction to the applicant regarding a series of *potential* problems ~~that may be possible~~.

Commissioner Weston said that since he thought the matter was to be continued, he hadn't read all information and objected to further discussion.

Mr. Garcia told Commissioners information regarding the 15% single-story dwelling submittal, and acknowledging that he did not count in those in the R-2, but will correct that. He also said that the lots proposed for the location of the nursery school (two 12,000 sf lots) will have footprints submitted. Mr. Garcia said that a big question will be the discussion of individual locations of the moderates. He also spoke on the cul-de-sac screening, saying if there is need for a specific landscape plan, he can come back with it.

Commissioner Lyle listed some of his concerns:

- 15% single story dwellings
- the number of units by phase seems still incorrect; Mr. Garcia will contact SP Linder
- ~~the lots indicated on the General Plan, where there is a question of feathering (on north of the project)~~ *the MH General Plan requires "feathering" (large lots) near its borders, such as the northeast section of this project and the new plan does not do this*
- *the lack of moderate units in the R1 portion of the project*

"Now there is a set of R-2 ~~projects~~ *lots* on the northeast, and the concern is at the west and northeast corners (Tilton and Saffron)," Commissioner Lyle said.

Mr. Garcia speaks to the R-2 on Dougherty, telling of why he wants that change. "I would prefer the lots as first shown along the railroad tracks at the northeast. We have 12,000 sf lots and moderate housing in the R-2," he said.

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With no others present to speak to the matter, Chair Mueller closed the public hearing.

Commissioner Lyle spoke on the need for clearing up the potential violation of the General Plan. "It needs to be redone," he declared. He said he also wondered whether the matter can be reconsidered in two weeks suggesting that the timing will be difficult for the applicant.

Chair Mueller said it is important to keep moving in an orderly fashion.

**COMMISSIONER ESCOBAR MOTIONED TO CONTINUE THE MATTER OF ZA-04-01/SD-04-01/DA-04-01: TILTON-GLENROCK TO THE NEXT REGULARLY SCHEDULED MEETING, APRIL 27, 2004. COMMISSIONER ENGLES SECONDED THE MOTION, WHICH PASSED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

### NEW BUSINESS:

**4) ZAA-01-05/  
UP-04-02:  
MONTEREY-  
SOUTH VALLEY  
DEVELOPERS/  
GATEWAY  
CENTER**

A request for an amendment to the approved mixed use office/retail Planned Unit Development on a four-acre site located at 18605 Monterey Rd. at the intersection of Cochrane Road and Monterey Road. The applicant also requests approval of a use permit for a coffee shop with a drive-thru.

PM Rowe presented the staff report as he called attention to the requirements of the PUD. PM Rowe also explained the issues in the traffic impact report. PM Rowe called attention to modifications in Resolution No. 04-40 (title: ~~AND~~ WITH and in section 3, item B as well).

Commissioner Escobar asked if the drive-thru is tied to the coffee shop? PM Rowe responded, "No, it runs with the land."

Commissioner Acevedo pointed out that coffee shop/drive-thru is *fast food* as defined by the City. "That use is not being changed, it is a fast food restaurant by definition of the City," he explained. PM Rowe affirmed this.

Commissioner Benich led discussion regarding going to more restrictive uses and the configuration change for the drive-thru use.

Commissioner Weston called attention to amendment 2 of the PUD, noting the drive-thru location at the ~~southerly end~~ *southeast corner* of the project and asking for clarification of the location. Commissioner Weston also noted that in Phase 4, amendment 5, this has been changed to reflect a single-story now, but had originally been a building with a second story? PM Rowe said, yes, the developer had asked for an option to meet parking requirements, noting the building height could be changed.

Chair Mueller opened the public hearing.

Scott Schilling, 16060 Caputo Drive, #160, said the applicant has recorded a four lot map and the service station is in operation. We are looking to have changes to the PUD, Mr.

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Schilling said, as he explained, “When considering long-term users, the applicant is hoping for upscale users, so the changes needed are going to be more all around.” He continued by speaking on companies retraining workers and looking at different configurations for work space as they emphasize lessening fats in the food served. Mr. Schilling explained the difference in traditional coffee shop use versus fast food and service needed for product sales. Mr. Schilling spoke about grouping of businesses and explained the parking needs as he indicated that a lot line adjustment between parcels two and three will be necessary. Mr. Schilling said the Planning Department staff has requested that landscaping and detail on the building facing Monterey Street be changed and explained how he plans to do that.

Commissioner Weston asked, “Why not continue for phase three the landscaping and meandering sidewalk in front of building three? Mr. Schilling told about the elevation on parcel two and the effect on the Monterey and Cochrane streets intersection regarding visibility, as he illustrated where the parking will be.

Mr. Schilling also addressed:

- the different use areas and the locations
- the elevation in relation to the railroad tracks
- architecture (there will be many verandas and overhangs)
- ratio of parking to uses in project explains excess parking

Mr. Schilling called attention to the plan for Parcel 4, requesting a ‘text modification variance’ saying he would like approval for the single-story approval to avoid a second request to the Commission.

Commissioner Weston asked about exchanging parking space? PM Rowe said that is ok.

Mr. Schilling called attention to desired changes in the Standard Conditions **pages 11** (item C: ...*55 feet*: Mr. Schilling maintained this figure is incorrect as he said the original requirement had been for *50 feet* to be dedicated, along with 10 – 15 feet for a public service easement) **and 21** (items 11 and 13: add the word ‘respectively’).

Commissioner Benich exclaimed that this plan is exactly what he hoped would happen to this corner. “I think it is a good addition to the City!” Commissioner Benich questioned the availability of food service for workers at the site, asking if the developer has plans for a sandwich shop or restaurant on-site?

Mr. Schilling pointed out that the El Capri is still in operation to the north of the project. “I also think some user will be found, such as a sandwich shop operator. We need some key anchor tenants to make the project go and the applicant is searching,” Mr. Schilling said, as he reminded that parcel three was designed to house a restaurant.

Commissioner Acevedo returned to the City ordinance definition: a coffee shop is a ‘fast food restaurant’. “I’m against changing that language,” Commissioner Acevedo declared.

Mr. Schilling said that in terms of design, the site will not work for ‘traditional fast food’, “This building was designed for this specific use.” Commissioner Acevedo emphasized he is addressing the City’s definition. “It is the City’s, not mine,” Commissioner Acevedo stressed.

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Responding to a question from Commissioner Weston, Mr. Schilling explained that the placement of loading docks is a requirement of City code. Further responding to Commissioner Weston, Mr. Schilling gave the details of planned storm drainage and water retention facility placement.

SE Creer addressed the dedication of right-of-way (Standard Agreement, page 21) noting that the agreement for right-of-way was in place in the original agreement and saying it would be verified. As to the request by Mr. Schilling for language change in the Standard Agreement on page 11, SE Creer indicated concurrence.

Commissioner Weston highlighted other items in the Standard Agreement:

- (12 E) Mr. Schilling said this item is checked under Building Department requirements; SE Creer said that item needs to be checked in 12 E as well.
- Page 4 (building design) will be reviewed by SE Creer

With no others from the audience indicating a wish to speak to the matter, the public hearing was closed.

**COMMISSIONER WESTON OFFERED RESOLUTION NO. 04-39  
RECOMMENDING APPROVAL OF AN AMENDMENT AND REVISED  
PRECISE DEVELOPMENT PLAN FOR THE GATEWAY PLANNED UNIT  
DEVELOPMENT LOCATED AT THE INTERSECTION OF COCHRANE ROAD  
AND MONTEREY ROAD, WITH THE FINDINGS AND CONDITIONS  
CONTAINED THEREIN. THE MOTION WAS SECONDED BY  
COMMISSIONER BENICH AND CARRIED WITH THE FOLLOWING VOTE:  
AYES: ACEVEDO, BENICH, ENGLS, ESCOBAR, LYLE, MUELLER,  
WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

**COMMISSIONER ENGLS OFFERED RESOLUTION NO. 04-40 APPROVING  
A CONDITIONAL USE PERMIT TO ALLOW FOR THE OPERATION OF A  
COFFEE SHOP AND WITH ASSOCIATED DRIVE-THRU LANE TO BE  
LOCATED AT THE GATEWAY CENTER PLANNED DEVELOPMENT AT  
18605 MONTEREY ROAD, WITH THE FOLLOWING MODIFICATIONS:**

**Section 3: and with**

**Standard Agreement:**

**Page 11 (item C: original agreement/dedication language will be inserted)**

**Page 21 (items 11 and 13: add the word 'respectively')**

Commissioner Acevedo insisted he thinks this resolution is not necessary. "By City definition this is fast food. I don't have a problem and there has not been a problem. I think it is already allowable and I don't want to add work to something that's already done," he declared

PM Rowe explained that if the City leaves the original permit in place, changes in 12 and 13 are no longer applicable, urging the Commissioners at the 'very least there is need to amend the original permit' *due to building reconfiguration and lot line changes*.

Commissioner Acevedo said, "I am in favor of amending the original. Not because of the use change requested but for the physical configuration change." He further noted

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that he was in favor of their project and ‘everything that they wanted to do’. “I just thought they already had that right as we had given it to them previously,” Commissioner Acevedo stated.

Commissioner Benich indicated he has been surprised, as the Commissioners have been criticized by the public for permitting too many fast foods in Morgan Hill. “However, this is coffee shop, while by City definition is fast food, has a different design.” He indicated he was in favor of the report as written.

Chair Mueller commented that technically what the developer can do is being narrowed. “But if the applicant is looking for change, he must come back and that’s a good thing,” Chair Mueller said.

Commissioner Acevedo continued to argue for ‘consistency’

**COMMISSIONER WESTON SECONDED THE MOTION, NOTING THE FINDINGS AND CONDITIONS CONTAINED THEREIN. THE MOTION PASSED WITH THE FOLLOWING VOTE: AYES: BENICH, ENGLER, ESCOBAR, LYLE, MUELLER, WESTON; NOES: ACEVEDO; ABSTAIN: NONE; ABSENT: NONE.**

*Items 5 and 6 were reported and considered concurrently*

**5) MP-04-01: E.  
CENTRAL-  
SOUTH COUNTY  
HOUSING/MORGAN  
STATION  
AND**

(5) A request for Residential Development Control System (Measure P) affordable building allocations for Fiscal Year 2005-2006. The project consists of 16 residential dwellings on a 2.15-acre site located north of E. Central Avenue, between McLaughlin Avenue and the Southern Pacific Railroad tracks. Seven of the 16 units have already been allocated to the project; therefore, the applicant is requesting nine additional allotments to complete development of the site.

**6) MP-04-02:  
MONTEREY-  
SOUTH COUNTY  
HOUSING  
/ROYAL COURT**

(6) The project consists of 68 residential dwellings, including 16 replacement units, on a 4.8-acre site located north of Wright Avenue, between Del Monte Avenue and Monterey Road.

AP Tolentino presented the staff report. Chair Mueller asked AP Tolentino to clarify the scoring for the two items, as he indicated that under the Measure P criteria, this category offers some confusion. AP Tolentino explained the location and oriented the Commissioners on the activities of the application. She detailed that on Royal Court, the applicant is requesting 56 allotments, noting that 16 of the 72 units are replacements. AP Tolentino explained the scoring of the project and presented revised scoring.

Commissioner Escobar requested clarification regarding the scoring for the schools. AP Tolentino interpreted point (which the education representative had scored) saying the point had been deducted for Morgan Station, and noting that Central is a Continuation High School.

Discussion ensued, with Commissioner Escobar saying he did not understand the distinction regarding the scoring. Chair Mueller asked staff to check with the school for clarification. Further discussion was had regarding the point system for proximity to schools. Commissioner Escobar commented that he had understood the point deals with

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location of project, not definition of school. "We need to know the differentiating distinction," Commissioner Escobar stated. "Central has all criteria for a high school but it is treated differently.

Chair Mueller opened the public hearing(s) for items 5 and 6 reminding that they were being heard concurrently.

Jan Lindenthal, 9150 Murray Ave., Suite 100, Gilroy, was present to represent South County Housing. Ms. Lindenthal said that in general, the evaluation of these two projects is indicative of the problems with Measure P regarding affordable housing and indicating that she thinks either there must be more subsidy or less affordability. Ms. Lindenthal addressed the errant points, saying that there were 12 in particular that she could argue in favor of exclusion. Providing an example of the *natural and environmental* category, Ms. Lindenthal said a point is given for preserving trees, but as part of the town home units that has no meaning; therefore, the project under discussion did not receive points. We have done all we could to preserve the trees, but lack the ability to retain the scoring. Ms. Lindenthal indicated she thinks that from a City stand-point, there is a need to think through affordable, high quality projects, as well as a need to look differently at those from the market value homes. Ms. Lindenthal said this project has no ability to get points for blight removal, but that should be available. Ms. Lindenthal said the Agency for whom she works has high standards, as does the City, as she concluded by saying that the relativity of the low score cannot be measured by value of the project.

Chair Mueller commented that was one of the items which needed to be looked at under Measure C, and that discussion would take place later in the meeting, urging Ms. Lindenthal to join that conversation. Ms. Lindenthal indicating willingness to do so.

With no others present who indicated a desire to speak to the matter, the public hearing(s) for items 5 and 6 were closed.

Chair Mueller called for the first scoring (the Commissioner's 1-point under the *quality of construction* category to be a 'hand vote'. Commissioners Acevedo, Engles, Benich, Escobar and Weston voted to give the point; Commissioner Lyle and Chair Mueller voted 'no, so the point was awarded.

The final scoring result:

MP-04-01: Central-South County Housing/Morgan Station 134

MP-04-02: Central-South County Housing/Royal Court136

Commissioner Benich initiated discussion regarding how the schools are 'counted' for the point scoring. "Do private schools count?" he asked. Commissioner Lyle explained that as condition of the initiative, private schools are not considered. Chair Mueller said that the provisions of the initiative removes the ability for discussion on the matter.

Chair Mueller called attention to the Royal Court application, noting that the applicant has said the motor court will be retained on site. Scoring could be affected by this action and Chair Mueller noted there may be a need for reevaluation of the project when the motor court is moved.

As Resolution No. 04-41 was presented, PM Rowe offered clarification of the two tables which were included in the resolution.

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COMMISSIONER WESTON OFFERED RESOLUTION NO. 04-41, INCLUDING THE RECOMMENDED FINDINGS AND CONDITIONS CONTAINED WITHIN, AND NOTING THE SCORING AS ASCERTAINED BY VOTE OF THE COMMISSIONERS, ESTABLISHING RESIDENTIAL DEVELOPMENT CONTROL SYSTEM ALLOTMENTS FOR TWO AFFORDABLE RESIDENTIAL PROJECTS IN FISCAL YEAR 2005-06. COMMISSIONER BENICH SECONDED THE MOTION, WHICH CARRIED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

OTHER BUSINESS:

7) RDCS  
SUBCOMMITTEE  
RECOMMENDATIONS

A request for Residential Development Control System (Measure P) affordable building allocations for Fiscal Year 2005-2006.

PM Rowe distributed the materials, reported the revisions, and explained the language and time/date changes recommended by the Residential Development Control System (RDCS) as he spoke on the changes in value of points suggested by the RDCS update subcommittee which has met twice weekly.

PM Rowe visited each category, noting the changes recommended in each: *orderly and contiguous* the map changes were explained with emphasis on the central core boundaries identified; compared to the existing boundaries, the area is now much smaller. Regarding the central core area, PM Rowe said it is important to identify the number of available lots for building, as he told of the square footage increments required for points, as well as the point availability near the freeway, as he stated that the changes on pages 34 and 35 were recommended by the Subcommittee.

*public facilities* addresses storm water detention location and impacts; PM Rowe explained the rationale for each

PM Rowe spoke on various changes in other categories, and called attention to *site recreation amenities*, saying effort was made to ensure the amenities and other categories will not be counted for additional points (giving the example of parks/pathways)

Chair Mueller suggested some language needs to be strengthened in dealing with amenities

There will be adjustments in points which will provide for more 'bridge' in BMR units.

Page 55 # 5 this eliminates the need for recreating in case of builder change (in the past a new builder might come in for change in the project thus necessitating adjustment of points and other concessions. Chair Mueller gave as an example an applicant has been thru the Measure P allocation process, then sells project and the new builder wants changes which makes for delay of up to a year; now that won't happen

Commissioner Weston asked, if an applicant goes through the Measure P process and the applicant wants to get bids for a new builder, will the applicant have a ~~big project~~ *score reduction*?

Chair Mueller explained that applicants sometimes sell the project and not just change builders.

Commissioner Escobar noted it is not clear if the new builder has the same

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qualifications as the original builder.

Chair Mueller gave the Marisol project as an example. He cited this being different with the changing units

PM Rowe stated this has provided some problems.

Commissioner Benich suggested the purpose may be to eliminate speculation.

PM Rowe turned attention to page v-56 saying much of the language here had been struck and simplified to assist with making the one-point vote by the Commissioners a less complicated, more straightforward resolution. Other changes were suggested by Commissioners

Commissioner Weston asked if there is a standard in place for identifying a 'qualified builder'? PM Rowe said this issue will require some study, as it is not clear.

Commissioners suggested that a builder may have built their own home and be a 'qualified builder'; some suggested a 'qualified builder' may have completed larger projects. Chair Mueller said identifying 'qualified' is a problem. Commissioner Escobar suggested the word 'qualified' could be retained, but needs to be defined.

Discussion ensued regarding a standard for 'qualified'; examples of the need for 'buildable' projects and how that should be applied. Commissioner Escobar stated that once the definitions are established, there will be a need to 'stick with it'.

Chair Mueller commented, "If the State keeps us to the building schedule, it could present problems."

Regarding the changes on page 56, PM Rowe stated the reason the language is being struck were suggestions for change from staff including insertion of suggestions from the Subcommittee.

Commissioner Acevedo suggested that the Building Department not give a point, but just provide input and let the Commissioners decide on point award.

PM Rowe called attention to other suggested changes in the categories of:

*Circulation* (changes in the livable communities category)

*Safety & security* wherein there will be increased points under item c (page 63)

Commissioner Benich informed that he had been a member of the Subcommittee and 'we had to come up with an additional five points, which was difficult, and we also had to remove other .

*Natural and environmental* category was reduced to 10 points from 15

PM Rowe explained a new category, *Livable communities* where the one-point awarded by the Commissioners will be placed. Commissioner Benich asked for explanation of 'super majority'? PM Rowe urged need discussion regarding 'super majority'.

Commissioner Lyle said that at the City Council, they have decided that four of the five members constitutes a 'super majority', suggesting that by consensus, the Commissioners could decide that one more than a majority of the voting members present would be a 'super majority'. It was unanimous agreed that would be the Commissioners' 'super majority'. Commissioner Lyle asked PM Rowe to ascertain if a legal definition for 'super majority' exists in the Municipal Code.

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Commissioner Escobar asked if the data on Page 72, which is new, specific for points? [Yes]

Chair Mueller opened the public hearing.

Rocké Garcia, 1000 Old Quarry Road, San Jose, said he highly supports most of the changes. He suggested 'with residential subdivision experience' as replacement for 'qualified builder'. Mr. Garcia also informed that he had had score variation and would like to point out: on V-40 the over-sized pond could rather significantly affect projects where he had been involved. Noting that he could have gone to 50%, as he had property to the west of Fisher Creek, but could be penalized now as this is considered an on-going project, but would like to be given consideration for a point.

Commissioner Engle asked such a project could be 'Grandfathered' in? [No]

Chair Mueller said it might be possible, however, to consider a one-year transition for the on-going projects. There was general discussion regarding the possibilities for award of the point.

Mr. Garcia then turned to Page V-59 where conditions for rear garages is contained, saying it appears to suggest that 'z-lots' are contained in this category. PM Rowe affirmed this.

Mr. Garcia then asked about paragraph 2, item L on V-64, saying this would be difficult if a Home Owners Association (HOA) is established. "A vote can't be guaranteed for maintenance by an existing HOA for a project," Mr. Garcia said citing the projects he currently has involvement in.

Commissioner Benich asked if other ~~projects~~ *items now required by code* would be adversely affected? Chair Mueller said, "Not as many as you might think. This, too, would be a transition item."

Mr. Garcia also spoke on items dealing with the Police Department and the Water District which also are involved in awarding points.

Jan Lindenthal, 9150 Murray Ave., Suite 100, Gilroy, spoke on how the affordable projects will be impacted by the suggested changes. She gave as an example (in the *public facilities* category) for an affordable project, asking: does it really make sense to require an oversize detention basin or be required to pay the fees? "What's really appropriate for a public building project is perhaps a need for change in this category (page V-39) for the small public projects," Ms. Lindenthal stated. "I served on the Measure P Update Subcommittee and argued against the increase to have 150 points for passage. Since that is the case, a public agency would have to pay fees to meet the requirements." Ms. Lindenthal said that in some cases it just doesn't matter; if there is a need to pay the fees, the public agency just can't do it," as she gave *lot layout* as an example. "Some criteria (such as that in the *public facilities* category) become prohibitive for affordable projects." Ms. Lindenthal offered to do duplicate scoring to emphasize differences in the way the scoring would result.

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Chair Mueller suggested to Ms. Lindenthal to document suggested changes and especially those she had presented in the Subcommittee meetings.

Commissioner Lyle asked when the matter would be heard next? PM Rowe explained the Commissioners would hear it as a draft Ordinance in May.

Discussion ensued as to when the Subcommittee could meet to consider the changes suggested for inclusion into the draft Ordinance.

With no others present to speak to the matter, the public hearing was closed.

Commissioners raised other issues for the Subcommittee to consider:

- distance to schools
- jurisdictional boundaries as determined by school
- project boundaries with students living within the project
- landmarks evaluated by historical committee to be established (within three weeks a comprehensive city-wide list of sites will be formulated); the Planning Commission. also sits as the Preservation Society and can deal with this matter.
- painted of house addresses which will be required of HOA (can be contracted with community service group)
- type used in the report causes readers problems
- Housing types category (V-46) first line on V-46

Noting that there was no vote on this item scheduled for this evening, and that the matter will be returned to the Commission in May, Chair Mueller asked the Commissioners having suggestions for the draft Ordinance to contact staff directly.

### 8) MULTI-FAMILY VACANCY RATE REPORT

Bi-annual review of apartment vacancy rate as required in accordance to the Morgan Hill Municipal Code, Chapter 17.36.

PM Rowe gave the staff report, telling Commissioners that this is the first time the vacancy rate has been calculated at 5% in over 5 years. PM Rowe spoke about the effect of these numbers, noting that the +5% rate allows units to be converted to ownership condos.

Chair Mueller asked about the necessity to have the report presented. "How often is this required?" Chair Mueller asked, *noting he thought it was every six months*. PM Rowe informed that by ordinance it is to be considered only quarterly.

**COMMISSIONERS ESCOBAR AND LYLE MOTIONED TO ACCEPT THE MULTI-FAMILY VACANCY RATE AND FORWARD THE REPORT TO THE CITY COUNCIL. THE MOTION CARRIED WITH THE UNANIMOUS VOTE OF ALL COMMISSIONERS PRESENT.**

### ANNOUNCEMENTS:

PM Rowe distributed information regarding recent City Council actions.

PM Rowe announced he would be attending a Planner's conference in Washington DC on April 27<sup>th</sup> and consequently would not be present at the next Commission meeting.

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**ADJOURNMENT:** There being no further business, Chair Mueller adjourned the meeting at 10:25 p.m.

**MINUTES RECORDED AND PREPARED BY:**

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**JUDI H. JOHNSON, Minutes Clerk**

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